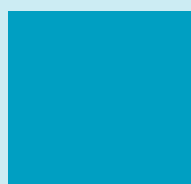
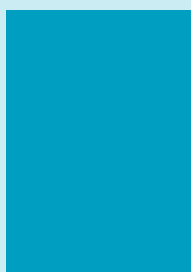
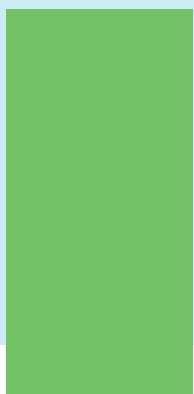




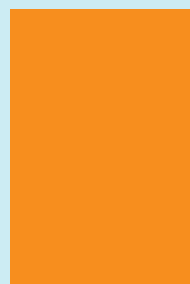
association for
the prevention
of torture

The Middle East and North Africa

A Torture Free Zone



Summer 2013



Let's lay foundations now for a torture free zone!

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Mark Thomson
APT Secretary General

The risk of torture and ill-treatment exists everywhere, unless we take concrete actions to prevent it. But under repressive rule, characterised by arbitrary arrest and torture of opponents and political prisoners, these horrific acts become extremely widespread. Inevitably, they are also being routinely used in criminal procedures. Torture does not stop automatically with the fall of such repressive regimes. If not addressed, the culture of torture will persist and obstruct the transition to democracy.

This issue of the e-bulletin shows the anti-torture measures are a key element in transitional justice. We would like to thank Pablo de Greiff, **the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence** and the International Commission of Jurists for their opinion pieces on how to stop torture in times of transition.

Torture can be stopped. It starts with political will.

A transitory government or any other new authority can start immediately with laying down some building blocks for a torture free future. New authorities can, as soon as they take office, make it clear that they will not tolerate torture anymore. Media can bring to light the past and ongoing abuses. New leaders can open their eyes, open the places of detention for independent monitors from civil society, the judiciary and the international community and listen to their recommendations. Transitory governments can make formal commitments to torture prevention by signing on to international treaties, as the transitory government in Tunisia has done. More can be done. Check APT's policy paper on 8 Building Blocks for a Torture-free Future on our website (www.appt.ch).

The challenge can seem enormous. But, commemorating "Nelson Mandela International Day" on his 95th birthday gives me hope. Societies and cultures can change. We can live to see the changes happen. A man, a woman can contribute.

I wish you success in your anti-torture work. While striving for the change, please do stay safe enough to see the changes happening.

1. Editorial

Torture in the past and in transition



Mervat Rishmawi
Human Rights Consultant

On 26 June 2013, while this electronic bulletin was being prepared, the human rights community commemorated the International Day in Support of Victims of Torture. This day, celebrated annually, reminds us that hundreds of people across the world are falling victims of torture and ill-treatment. Unfortunately, it reminds us that this is not a practice of the past, but that it is still happening today. It also reminds us that it is not unique to one country more than others. However, today we are in a better position than the past in terms of dealing with this. There is higher awareness of the need to put in place laws, policies and regulations to monitor places of detention; ensure that torture and ill-treatment do not take place; investigate suspected cases; and impose punishment which is proportionate to the gravity of the crime of torture.

Today, also, in order to ensure that torture and ill-treatment are prevented in the first place, and that we do not deal with the aftermath following the occurrence of the crime, prevention mechanisms are put in place. This includes the elaboration of systems of unannounced visits to places of detention by special national and international prevention mechanisms as is provided by the Optional Protocol to the Convention against Torture.

Today, ensuring truth, justice, reparation and guarantees of non-recurrence for torture as a grave crime under international law has become an undisputed right. Measures are being developed in many parts of the world to fulfil this.

However, this sadly does not mean that the crimes of torture and ill-treatment have stopped. They are still being committed in various parts of the world. The crime of torture is being committed on individual bases, sometimes as policies, and sometimes when officials turn a blind eye. Laws are not modified adequately to criminalise and punish torture. A culture of impunity sometimes prevails.

Today, we are reminded that torture and ill-treatment are still used as weapons of oppression and war. As the Independent International Commission of Inquiry on

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Syria reminds us in the summary of its latest report to the Human Rights Council in June 2013: "Government forces and affiliated militia have committed murder, torture, rape, forcible displacement, enforced disappearance and other inhumane acts. Many of these crimes were perpetrated as part of widespread or systematic attacks against civilian populations and constitute crimes against humanity. War crimes and gross violations of international human rights law – including summary execution, arbitrary arrest and detention, unlawful attack, attacking protected objects, and pillaging and destruction of property – have also been committed.... Anti-Government armed groups have also committed war crimes, including murder, sentencing and execution without due process, torture, hostage-taking and pillage." (A/HRC/23/58)

However, as human rights activists, we are being more equipped with knowledge and tools to fight against this. We use the UN and regional human rights mechanisms to expose cases; analyse defects in laws; lobby for changes in law and practice; and join forces with other human rights activists and government representatives across the globe to realise resolutions in UN bodies like the Human Rights Council which elaborates on the standards and provides additional tools. We work closely with the human rights experts of the UN or other regional inter-governmental bodies. We link our work at the international level with our work at the national level in order to achieve real change.

We are continuously reminded that we cannot be complacent as long as one person dies in prison somewhere, or is tortured or ill-treated for whatever reason: to extract confession from her or him, or to put pressure on a third party, or as a method of punishment or discrimination for who he or she is or stands for. The fight is long, and we will always work together.

The conflicts in the region today, especially in Syria, and the past conflict in Libya; as well as events in Bahrain, Yemen, Egypt and the continued occupation in Palestine remind us that our region is still not free from torture. Mechanisms to deal with torture now, as well as transitional justice mechanisms for post conflict and for countries in transition, provide important tools. Torture and ill-treatment is still practiced in other countries in the region, as has repeatedly been emphasised by UN mechanisms.

We will work together to ensure that our region: the Middle East and North Africa is a torture free zone.

This issue

In this issue we shed light on some important work carried out in the MENA region in relation to Transitional Justice measures. We include two important "Opinion Pieces", the first by the UN Special Rapporteur for the promotion of truth, justice, reparation, and guarantees on non-recurrence, where he reflects on his mandate and provides a few observations particularly relevant to the MENA region. The second is by the International Commission of Jurists where they highlight challenges to transitional justice in Egypt, Libya and Tunisia. A number of very interesting articles about work of activists "From the Field" are also included. A section on "Recent Developments" reflects on a number of recent developments in the UN including consideration of reports by the Committee against Torture, reports of the UN Special Rapporteur on Torture, and other recent news on standard-setting as well as consideration to reports of the Arab Human Rights Committee. Finally, in the "Questions and Answers" section, an answer is provided to a question on whether the crime of torture can ever be time-barred.

Next issue

Next issue will be on Monitoring Places of Detention. We will be very happy to receive contributions from you on your work on detention monitoring; visiting places of detention; use of litigation; legislative reform; and other such related issues.

Please write to editor.mena@apt.ch

2. Opinion Pieces

Some Thoughts on Transitional Justice



Pablo de Greiff
Special Rapporteur for the promotion of truth, justice, reparation, and guarantees on non-recurrence

In May 2012, I took up the function as UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. The mandate of the Special Rapporteur was created by the Human Rights Council in 2011 by a consensus resolution 18/7. The mandate evolved out of a cross-regional initiative by Switzerland, Argentina and Morocco; so a country in the MENA region (whose truth commission I had advised many years ago) was one of many that played an important role in the process leading up to the adoption of the resolution establishing the mandate. The Middle East and North Africa (MENA) region is the locus of important transitions and therefore the mandate is following developments in the area closely. In the conviction that there are important differences in the way that the various regions implement the measures under the mandate, I started the exercise of the mandate with the organization of regional consultations. The first of these meetings, involving both representatives of states and civil society organizations, was precisely for the countries in the MENA region.¹ Further, my first official visit as Special Rapporteur was to Tunisia, by the invitation of the Government, in November 2012.

In this brief piece, I want to present some thoughts on the state of the field of transitional justice, achievements and challenges included, and a few reflections that might be of particular relevance in the MENA region.

In a fairly short period of time of about 30 years, transitional justice can claim to have achieved some important successes. I would like to start by highlighting these.

¹ The meeting took place in Cairo, Egypt, in November 2012. The second regional consultation organized by the mandate, for the Latin America and Caribbean region, took place in Buenos Aires, Argentina, in December 2012. A regional consultation for the Africa region is planned for November 2012, and a consultation for the European region for spring 2013. A consultation for the Asia region will follow shortly thereafter.

First, transitional justice has managed during the last twenty to thirty years to consolidate itself as a specific autonomous field. There is a great deal of academic activity around transitional justice, in addition to a growing network of experts, as well as official government positions and even entities in charge of transitional justice. For instance, Tunisia established recently the first ever Ministry for Human Rights and Transitional Justice. Furthermore, international cooperation devotes significant resources to the field. There is a dense network of civil society organizations both at the national and international level that has specialized on issues of human rights and transitional justice. In other words, there is no question that transitional justice is a distinct field consisting of academic reflection, activism, as well as of policy making. Taking into consideration how hard it is to mobilize resources to create networks, the fact that transitional justice has managed to do so in such a short period of time, is certainly worth highlighting.

Second, and much more important than the consolidation of the field, but related to it, is that transitional justice has become a normal part of the sets of policies that countries in the process of political transition are expected to implement. The normalization of transitional justice in this sense is a second achievement that the field can claim for itself, both at the national and international level. There is a range of instruments and mechanisms, today, at the international, regional and national levels that refer to the right to truth, justice, reparation and to guarantees of non-recurrence.

Third, in the process of implementing transitional justice measures one of the inevitable consequences has been to make victims visible and to give civil society organizations a voice and a space in the public sphere that they did not have before. This articulating effect of transitional justice measures is a fundamentally important contribution, and something that those of us who work in the field have reasons to celebrate.

I do not want to turn this article into a celebration only because we all know that the field of transitional justice also faces very significant challenges - some of these have been with the field from the beginning while others are new. Let me mention some of these challenges that I think are significant.

The first challenge that transitional justice faces is characteristic of fields that promote not just one but a variety of measures. Following the definition provided by the UN Secretary General, transitional justice is understood in terms of the implementation of the four measures that are part of the title of the mandate: truth, justice, reparation and guarantees of non-recurrence. A series of questions arise: Each one of these includes a number of sub-categories reflecting various rights. How to keep these four measures together? How to design

and implement programs that are truly comprehensive and that help to withstand the constant temptation, particularly by governments, to trade off one measure against the other? How to avoid, for example, the temptation of saying we will be generous in terms of reparation and truth in order to avoid pursuing, or pursue less aggressively justice or institutional reforms? In other words, the field still faces a challenge, both in theory and in practice, in relation to the design and the implementation of truly comprehensive measures that help satisfy the existing rights of victims and of society more generally. Progress is unlikely to be simultaneous and even less instantaneous, but nevertheless the challenge is how to think about transitional justice in a way that includes the implementation and realization of the four sets of measures in a *coordinated* fashion over time. I think that some progress has been achieved in this area. But each wave of transition brings up a new set of challenges of how to achieve a truly comprehensive transitional justice policy. I will dedicate significant work in the implementation of the mandate on making a contribution to address this challenge.

The other challenge that I think the field faces is at least in part a result of its own success. To illustrate what I mean by that, let me point to the historic roots of transitional justice. The measures of truth-seeking, justice initiatives, reparation, and guarantees of non-recurrence emerged first as practices and experiences in post-authoritarian settings, such as the Latin American countries of the Southern Cone and, to a lesser extent, those in Central and Eastern Europe and South Africa. Despite all their differences, these settings shared the following main characteristics. First, the countries concerned had achieved relatively high degrees of both horizontal and vertical institutionalization, that is, their institutions could cover all their national territories and, their legal systems already contained provisions for the regulation of the relationship between citizens and State institutions regarding at least the most fundamental topics. Second, the measures that emerged were adopted as a response to a particular kind of violation, namely, those associated with the abusive exercise of State power through precisely those institutions.

As the field kept growing, measures of transitional justice have been progressively transferred from their “place of origin” in post-authoritarian settings, to post-conflict contexts and even to settings in which conflict is ongoing or to those in which there has been no transition to speak of. New challenges arrived with this expansion, generating the expectation that it will be equally effective in these contexts that are so different from post authoritarian situations. There is the tendency to say there is no “one size fits all” recipe for transitional justice and that each country has to find its own way. And at the same time states signed up to universal obligation that require all countries to satisfy the rights to justice, to

truth, to reparation, to guarantee of non recurrence. The implementation of programs to satisfy these obligations in situations with different institutional capacities, political traditions, and needs, is challenging. Countries also differ from one another in their ability to generate resources and in the availability of local capacities. To understand the implementation of transitional justice measures in such variety of cases, I think, is one of the biggest challenges that the field still faces.

Let me now, finally, turn to some reflections on how the new mandate on truth, justice, reparation and guarantees of non-recurrence can assist in addressing some of these challenges.

There are three thematic areas where I think the mandate can make a contribution to strengthening the field; these are also reflected in my first report to the Human Rights Council.² The first area concerns the link between truth, justice, reparation and guarantees of non-recurrence, an issue to which I will dedicate significant time and work, as I have mentioned before. The resolution that established the mandate insists on the importance of taking a comprehensive approach in the implementation of these measures. There is practice suggesting that when measures are implemented in an integrated fashion they are much more effective than when implemented in isolation. Morocco, for example, provides an interesting example about the difference that it makes to establish a reparation program as a standalone initiative or taking an integrated approach with a truth telling exercise that also involved some initiatives concerning institutional reform. The latter approach has proved to gain far more acceptance and legitimacy among victims and the society at large. The draft law on Transitional Justice being debated in Tunisia also calls for the implementation of a comprehensive approach.

The second area refers to context-sensitivity, i.e. making the measures more sensitive to the characteristics of the different contexts they are applied in today. This relates both to the different degrees of institutional strength, and also to the various needs generated by the differences in sources and types of violations.

And finally, the third area where I consider that more work needs to be done concerns increasing the effectiveness of the measures in post-conflict situations. It is already difficult for the measures that are part of transitional justice to achieve their own goals, namely, providing recognition to victims – as victims but fundamentally, as bearers of rights - fostering trust between citizens and the state, as well as strengthening the rule of law. It would be a tremendous error to think that transitional justice can burden the agenda of a political, social, and

² A/HRC/21/46.

economic transformation – the process is certainly much more comprehensive. Transitional justice, indeed, is part of this process, making sure that justice for serious human rights violations is not forgotten. At the same time, the challenge of the field is to articulate the relationship with other areas of policy interventions, such as development and security.

In my view these are not impossible challenges to meet. There are encouraging instances of practice that cannot be ignored: different countries have undertaken significant initiatives for their people in the aftermath of serious violations, with and without international cooperation, and there is an ever growing commitment of civil society to achieve justice. Each new case demonstrates that serious rights violations cannot be swept under the rug; that problems do not disappear and people do not forget.

Consistent with the idea that it is important to be mindful of contextual features, I will finish with a few reflections that might be of particular relevance to the MENA region (although most of them would have applied to transitional processes in different areas at different times):

- All revolutions face the challenge of making sure that they do not become instances of mere 'turn-taking' in which not so much oppression, but only the subjects of oppression change. Real transformation, of course, requires that the equal rights of *all* are effectively guaranteed. Transitional justice measures, both in their design and in their implementation must reflect this ideal.
- There is nothing that threatens more directly the real function of transitional justice measures than turning them into instruments which benefit supporters and punish detractors; transitional justice measures are rights-based and can be rights-enhancing precisely because whatever they distribute – benefits as well as sanctions - they distribute on the basis of rights, not affiliation with any particular cause. Transitional justice measures should not be conceived of as a way of rewarding *martyrs* but as a way of redressing human rights violations, whatever the identity of the perpetrator or the victim.
- In addition to claims for justice and political participation, the 'Arab Spring' brought to the fore, in ways that transitions in other countries had not, strong demands for economic opportunities, the end of corruption and other forms of economic crimes. This presents both an opportunity and a challenge: the opportunity for transitional justice is to articulate more clearly its links with development, the challenge is to find ways of addressing corruption and other economic crimes in ways that

do not overburden measures that were not originally conceived with such ends.

- A comprehensive approach to the four areas of transitional justice, as mentioned before, does not come easily. Countries in the area, however, have thus far exhibited a tendency to over rely on some measures at the expense of others. One may hope, for the sake of the sustainability and the effectiveness of the initiatives *as rights enhancing* instruments, that this is only a temporary tendency.
- Finally, as in most contexts where the topic is new, it is important to keep in mind that transitional justice is not a special kind of justice, a 'soft' form of justice. Much rather, it is a strategy for the achievement of a familiar conception of justice to which countries in the area have adhered as manifested by their ratification of international instruments that ground and express rights to truth, justice, reparation, and guarantees of non-recurrence. Similarly, and as a consequence, it must be kept in mind that reconciliation is not an alternative to justice, but that it requires, precisely, the implementation of measures that include the four elements under the mandate.

For how long will impunity prevail?

Alice Goodenough & Marya Farah

Legal Adviser & Associate Legal Adviser for the MENA Programme
International Commission of Jurists



For many years, the Egyptian authorities have failed to hold accountable those responsible for torture and other ill-treatment, unlawful killings and arbitrary detention, to name just a few violations of human rights. As a result, impunity has prevailed and the human rights violations have continued unabated, including both during and after the 2011 uprising. To end this cycle of impunity, the underlying causes must be addressed.

The International Commission of Jurists (ICJ) visited Egypt and organised a conference with the Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights. During that, judges, lawyers, human rights defenders and victims identified numerous failings and obstacles in the current system that preclude accountability for those responsible for gross human rights violations.

Egypt's legal framework falls far short of international law standards in many respects. For example, it fails to criminalise a variety of conduct that amounts to torture under Article 1 of the Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (CAT), to which Egypt is a State party. In particular, Article 126 of the Criminal Code only extends the crime of torture to public officials or employees who order or conduct the torturing of a "suspect" and the torture is done "in order to force him/her to confess". The acquiescence or consent of a public official to, or their complicity in, the act is not criminalised by this definition, nor is it clear that the infliction of mental suffering is covered. Punishment for this offence can range from 3 to 10 years imprisonment. Further, if the torture or ill-treatment occurs for a purpose other than a coerced "confession", it is not considered torture and instead must be examined under Article 129, the lesser offence of "employing cruelty" against a person to "breach their honour" or "cause bodily pain". This crime is classified as a misdemeanour, which is punishable by a maximum of one-year imprisonment, and only applies to the individual that carried out the torture. The punishments provided for under both Articles 126 and 129 are not commensurate with the gravity of the crime.

An example of the implications of this deeply flawed framework is a case raised with the ICJ mission of a police officer acquitted of torture on the basis that the victim was said to have died of "fear" while in police custody. The mere fact that the victim was found to have died of "fear" should have raised legitimate suspicions about the victim having been subjected to severe mental and/or physical suffering while in police custody. The court failed to properly address these suspicions.

This case also highlights the flaws in the forensic medical report that identified the cause of death and the failings in the forensic medical establishment as a whole. Reforming this institution and safeguarding its independence from the police and the executive is a prerequisite to ensuring accountability for cases of human rights violations committed by law enforcement officers. Equally important to ensuring such accountability is reinforcing the capacity of judges and prosecutors to adequately and properly apply international human rights law and standards in investigating and ruling on cases of human rights violations.

In relation to trials of former regime officials and police and military officers, judges stressed that they must rule on the facts presented in the courtroom and the evidence before them rather than bowing to pressure from the street.

While a number of judges suggested that prosecutors had bowed to this pressure and were referring cases that were ill-prepared and lacking in evidence and sufficient grounds for referral, some prosecutors acknowledged that the high rate of acquittals in cases of torture and the injury and unlawful killing of protestors was due to the difficulties they face in the collection of evidence. Prosecutors and lawyers stated that the problem in such cases is that evidence of the crime is in the hands of the perpetrator, and the police and/or the military are unwilling to provide evidence against themselves in cases of human rights abuses. It is therefore important for the Egyptian authorities to ensure that investigations in cases of torture and ill-treatment allegedly committed by law enforcement officials are thorough, independent, impartial and in full compliance with international standards.

From the perspective of victims of human rights violations and their families, the feeling is that those who have suffered the most remain a secondary concern. The barriers they face in bringing cases against the police and other State officials are profound, including inaccurate forensic reports that ignored clear signs of abuse, morgues and hospitals that obstructed their search for relatives and prosecutors that either exert pressure on individuals not to pursue claims or hinder their rights to file complaints.

These barriers undermine not only the rights of victims and family members to a remedy and to hold those responsible accountable, they also frequently hinder their access to government-sponsored reparation initiatives. For example, because the forensic report inaccurately attributes the cause of death to “fear” instead of torture, the victim can be excluded from such initiatives. Further, current reparation mechanisms are limited in terms of their remit and the reparation they can provide.

In addition, while proposals for much-needed reforms of the police and security services have stalled, other proposals to reform the justice system, if adopted, would undermine the independence of the judiciary rather than reinforcing it. For example, recent draft laws on the judiciary have focused on reducing the retirement age for judges. The immediate effect of these draft laws, if adopted, would be the forced retirement of scores of judges. It would also constitute a serious attack on the security of tenure of judges, contrary to international law standards.

The denial of the rights of victims of human rights violations and the impunity that continues to prevail is not unique to Egypt and can be seen in other MENA countries where recent uprisings have also led to the overthrow of repressive regimes, namely Tunisia and Libya.

In Tunisia, the government has shown an increased willingness to initiate transitional justice initiatives, including through the drafting of a transitional justice bill. However, victims, family members and civil society groups continue to raise major concerns about the lack of effective measures to address impunity and ensure the rights of victims to a remedy and to reparation.

One of these concerns has been the pervasive use of military tribunals to hear cases involving gross human rights violations committed before and during the Tunisian uprising. These tribunals lack the necessary independence from the executive both to conduct effective investigations and to adjudicate cases in an independent and impartial manner in accordance with international fair trial standards. Failings include extensive delays in investigating cases or inadequate investigations, a lack of cooperation with the prosecution by the Ministry of Defence and Interior, and judges handing down sentences that are not commensurate with the gravity of the crimes committed.

At the same time, the Tunisian authorities have failed so far to bring the legal framework in line with international human rights standards. For example, as is the case in Egypt, the definition of torture in the Tunisian Criminal Code requires amendment to bring it in line with Article 1 of the CAT, including by criminalizing the acquiescence

or consent of a public official to, or their complicity in, acts of torture. Further reforms are also required to prohibit reliance on confessions obtained by torture and to end limitation periods for the crime of torture.

Although the most recent draft Constitution offers some improvements in this regard, notably by providing that the crime of torture is imprescriptible, it falls short of international standards by limiting the definition of torture, referring only to the prohibition of “all forms of moral and physical torture”, and by failing to restrict the jurisdiction of military courts to exclude civilians and cases involving human rights violations.

In Libya, judicial independence has been severely undermined over many years by the former regime as a result of systematic attacks on the judiciary, including through executive control over the public prosecution service and the extensive use of special courts. Under this framework, the rights of victims of gross human rights violations committed before, during and after the uprising have largely been denied.

While the transitional authorities have made tentative steps towards reforming the judiciary to grant it independence, the remaining challenges are extensive, not least the need to protect judges, prosecutors and court houses from increasing violent attacks, the weaknesses of State institutions and law enforcement bodies, including police services, and the role being played by numerous armed groups in unlawfully arresting and detaining individuals, as well as subjecting them to various human rights abuses.

In each of these three countries, there is an urgent need to initiate and implement the necessary legal and policy reforms to ensure accountability for human rights violations, including through the establishment of transitional justice mechanisms. Only once this has been achieved can the victims and their rights cease to be a secondary concern and impunity be brought to an end.

3. Recent developments

Prepared by:
Mervat Rishmawi;
Matthew Sands; and
Marcellina Priadi

Human Rights Committee

Draft General Comment number 35, on article 9 (liberty and security) by the Human Rights Committee: As reported in [issue 3](#) of this electronic bulletin, a General Discussion day was held to examine the most recent draft (CCPR/C/107/R.3) and began its first reading. However, the process remains incomplete, and further meetings on the Comment are planned. No opportunities were available for NGO comments during the reading, though the rapporteur on the General Comment has made clear that he would always consider any further advice from NGOs.

A review of the latest draft demonstrates strengthening of the text in areas highlighted by interventions like APT. Important 'safeguards' in detention are now highlighted in the text, and the relationship between article 9 and article 7. The comment also promotes independent inspections of all places of detention as a further safeguard to prevent abuse.

International Convention for the Protection of All Persons from Enforced Disappearance:

Consideration of state reports: The Committee on Enforced Disappearances (CED), the body of independent experts which monitors implementation of the Convention by the States Parties, will start considering first reports by state parties in November 2013.

On 28 May 2013, **Morocco** ratified the International Convention on the Protection of All Persons from Enforced Disappearance. **Iraq** is the only other Arab country party to the Convention (acceded in November 2010).

Human Rights Council

Resolution on Torture: "Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims": in March 2013, the Human Rights Council adopted [a resolution](#) which called on states to ratify the Convention against Torture, it called on states to ensure that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture and ill-treatment and that such acts are punished according to the gravity of the crime. The resolution stresses that national legal systems must ensure that victims obtain



redress without suffering any reprisals for bringing complaints or giving evidence; and the interdependence and equal importance of providing an effective remedy and reparation, including restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition, to redress torture and ill-treatment. This should take into full account the specific needs of the victim. Importantly, the resolution encourages States to adopt a victim-oriented approach and urges States to pay special attention to the provision of redress for gender-based violence that constitutes torture or other forms of ill-treatment punishment, and to adopt a gender-sensitive approach to redress; recognizing that sexual and gender-based violence that constitutes torture or other ill-treatment affects victims, their families, communities and societies. Effective remedies in those situations should include access to health care, psychosocial support, legal assistance and socioeconomic reintegration services for victims of such violence.

Unfortunately no Arab states co-sponsored the Resolution.

The UPR of the United Arab Emirates: The Working Group on the Universal Periodic Review (UPR) reviewed the United Arab Emirates in January 2013. This is the second cycle of the UPR review of the UAE. After considering the National Report, the compilation of UN information, summary of stakeholders' information, questions submitted in advance, the outcome document of the review included a number of observations and recommendations to the UAE. These included welcoming the ratification by the UAE of the Convention against Torture in 2012, and recommending that it ratify the OPCAT and the Rome Statute. There were also recommendations for the UAE to put in place procedures to respect rights of migrant workers and to adopt legislation to combat racial discrimination, to adopt a moratorium of the implementation the death penalty, and to ensure a prompt, independent and impartial investigation into all claims of torture.

Regarding the OPCAT, the UAE reiterated that it had ratified CAT only in 2012 and that it would look into this matter in the near future. With regard to the Rome Statute signed in November 2000, the UAE would take the common position of Arab countries concerning its ratification. Recommendations were also made to the UAE to withdraw the unilateral declaration it made which seriously limits the scope of the definition of torture under the Convention.

For full documentation of the UPR Review of the UAE, please [click here](#).

Commission of Inquiry on Syria: The Human Rights Council in June 2013 listened to a presentation of the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, which covers the period 15 January to 15 May 2013. The report states "Government forces and affiliated militia have committed murder, torture, rape, forcible displacement,



enforced disappearance and other inhumane acts. Many of these crimes were perpetrated as part of widespread or systematic attacks against civilian populations and constitute crimes against humanity. War crimes and gross violations of international human rights law – including summary execution, arbitrary arrest and detention, unlawful attack, attacking protected objects, and pillaging and destruction of property – have also been committed. The tragedy of Syria's 4.25 million internally displaced persons is compounded by recent incidents of IDPs being targeted and forcibly displaced. Anti-Government armed groups have also committed war crimes, including murder, sentencing and execution without due process, torture, hostage-taking and pillage. They continue to endanger the civilian population by positioning military objectives in civilian areas. The violations and abuses committed by anti-Government armed groups did not, however, reach the intensity and scale of those committed by Government forces and

affiliated militia. There are reasonable grounds to believe that chemical agents have been used as weapons. The precise agents, delivery systems or perpetrators could not be identified. The parties to the conflict are using dangerous rhetoric that enflames sectarian tensions and risks inciting mass, indiscriminate violence, particularly against vulnerable communities."

For full text of the report, please [click here](#).

Committee against Torture

Consideration of Report of the United Kingdom: The Committee against Torture (CAT) considered the [fifth periodic report of the United Kingdom](#) in May 2013, and issued its concluding observations. Among the issues raised with particular importance to the MENA region are the following:

Extraterritoriality: The CAT has called upon the UK to address its responsibility to ensure that individuals subject to state jurisdiction are treated according to the prohibition against torture as set out in the convention even when overseas.

Inquiries into allegations of torture overseas: Following allegations of torture and ill-treatment connected with the Iraq and Afghanistan military campaigns, the UK has stated its intention to 'hold an independent, judge-led inquiry'. The CAT has recommended that the new inquiry take into account the UN Special Rapporteur on Torture report on best practices for commissions of inquiry and address the deficiencies of the 'Detainee Inquiry' into UK complicity with improper treatment of detainees by other countries following 9/11. The Committee also requested the urgent publishing of the 'Detainee Inquiry' interim report.

Accountability for abuses in Iraq: Several inquiries have been set up to investigate allegations involving the UK army but there is concern that the close connection between these and the Ministry of Defence compromises their independence. Although the UK refuses, the Committee urges the State to take all necessary measures, including setting up a single, independent public inquiry to comprehensively investigate allegations of torture and cruel, inhuman or degrading treatment or punishment in Iraq from 2003 to 2009, establishing responsibilities and ensuring accountability.

The Committee expressed regret that the UK continues to resist a full public inquiry that would assess the extent of torture and ill-treatment and establish possible command responsibility for senior political and military figures; and is deeply concerned that there have been no criminal prosecutions for torture or complicity in torture involving State officials, members of the security services or military personnel, although there have

been a number of court martials of soldiers for abuses committed in Iraq against civilians.

Appropriate penalties for torture: The Committee expressed deep concern that despite the gravity of the injuries inflicted by British soldiers on Baha Mousa (in Iraq), the investigation and prosecution of his death has led to acquittal or charges dropped for six of them and only one year imprisonment for the corporal who pleaded guilty to inhumane treatment. The Committee urges that penalties against all officials, security service or military personnel abroad be imposed in line with the gravity of the crime committed in accordance with article 4 of the Torture Convention.

Reliance on diplomatic assurances: The Committee has criticised the State party's reliance on diplomatic assurances to support the deportation of foreign nationals suspected of terror related activities to states with widespread allegations of torture. The Committee highlighted the State's responsibility to not expose anyone to the 'substantial' risk of torture or cruel, inhuman or degrading treatment or punishment and stressed its opinion on diplomatic assurances regarding this issue as 'unreliable and ineffective'.

Use of evidence obtained by torture: Where allegations of torture are made, the burden of proof on the admissibility of torture material currently lies with the defendant/applicant. However, the Committee requested that this burden be transferred to the State and emphasised that material gained from torture or cruel, inhuman, or degrading treatment through other countries should not be depended upon.

Special Rapporteur on Torture

Visit to Bahrain: The re-scheduled visit of the Special Rapporteur on Torture to Bahrain on 8-15 May 2013 was cancelled at the last minute once again by the Bahraini government. The original visit was scheduled for March 2012 but the Government has stated its concern that a visit by the Special Rapporteur on Torture may compromise the success of the Bahrain National Dialogue, a programme set up in 2011 in response to uprisings and, according to the Bahraini government, designed to enable a national dialogue. The UN Special Rapporteur on Torture has noted the potential negatives that can be perceived from the cancellation of the visit, which has not had alternative dates proposed either, and has urged the Government to uphold its commitment to the accepted recommendation to welcome a visit.

For further information, please [click here](#).

Minimum Detention Standards reviewed (again)



In April 2013, the [UNODC Crime Commission](#) resolved to commence a further round of negotiations on the potential to revise the Standard Minimum Rules for the Treatment of Prisoners.

The Standard Minimum Rules, first adopted in 1955, continue to stand as a landmark text against which almost all States around the world assess the quality of treatment and standards for detained persons. However, due to their age, some of the principles described in the Standard Minimum Rules, particularly those related to persons with disabilities, use outdated or offensive terminology. Several of the Rules also describe standards which have long since been reformed in line with modern correctional science. See, for instance, Rules related to discipline which permit the reduction in diet as a punishment, or allow solitary confinement where medical officers confirm the prisoner is fit to sustain it. The development of minimum guarantees in detention and principles of medical ethics mean that such Rules would be written very differently if they were adopted today. The review process now being undertaken by the UN therefore seeks to identify how the Rules might be revised to bring them up to date.

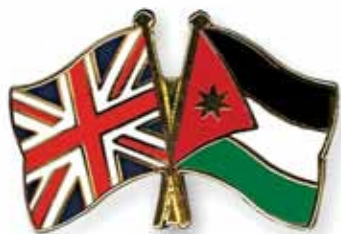
After some tense debate, the collected States finally adopted a [resolution](#) which endorsed the work already done by UN bodies, States and civil society to propose revisions to the Rules, and encouraged all actors to continue to contribute to the process. **Interested States and other actors are invited to send their proposals to the UNODC Secretariat before 30 September 2013,³ and an inter-governmental expert meeting is due to be convened in Brazil later this year to consider these proposals for revision in detail.**

Juan Mendez, Special Rapporteur on Torture, has since agreed to make the potential revision to the Standard Minimum Rules the subject of his [forthcoming thematic report to the General Assembly](#). The analysis by Mr Mendez will be a welcome contribution to the review

³ See paragraph 8 of the Resolution. Proposals for revision should be sent to the Justice Section at UNODC, Vienna International Centre, PO Box 500, A 1400 Vienna, Austria. Email correspondence may be sent to justice@unodc.org.

process. Such an expert report will help national actors, including national preventive mechanisms, to use the Rules to offer advice and effectively reduce the risk of torture and other ill-treatment in detention.

UK treaty with Jordan could see return of “radical cleric”



The UK has agreed a new treaty which could see the return of the Moslem cleric, Abu Qatada, to face trial in Jordan in the next few months.

The bilateral [treaty on mutual legal assistance in criminal matters](#) has also been approved by the king of Jordan, but will not become law until it is published in the official gazette, which is expected in July 2013.

Once the ratification process by both States is complete, the British government will recommence its efforts to deport Abu Qatada. The cleric has recently surprised commentators by indicating that he will not challenge a fresh order to remove him, as the international agreement would ensure he is guaranteed a fair trial process in Jordan.

Previously, as highlighted in an opinion piece in the first issue of our [e-bulletin](#), the European Court of Human Rights had ruled that Abu Qatada could not be returned to face retrial for the terrorism conviction determined in his absence, as the evidence held against him may have been obtained by torture, which would amount to “a flagrant denial of justice.” Even after various efforts were taken to demonstrate the judicial process would be fair, in a [separate ruling](#) the English courts refused to allow the deportation. Once again, judges confirmed that returning a person to face a trial based on evidence obtained by torture was a violation of their international legal obligations.

The use of evidence obtained by torture is forbidden in international law as an inherent part of the absolute prohibition of torture and a blatant denial of a fair trial. This guarantee is applicable in all cases, regardless of who the person is or the types of charges or accusations against him or her.

The case has become a serious embarrassment for

the British government which has tried to deport Abu Qatada, who judges accept is a ‘truly dangerous individual’, since his release from jail in 2005. Human rights actors, however, have continued to assert that Abu Qatada must be guaranteed the same fair trial rights as any other defendant, and that a reliance on political promises to ensure his safety would be insufficient to effectively protect Abu Qatada from ill-treatment or torture on his return.

Fair trial guarantees: The fair trial process agreed between the two States is set out in Chapter VIII of the treaty, which requires a number of safeguards for persons returned under the agreement, and which reduces the risk of unfair proceedings. These safeguards include the right to be brought promptly before a judge, to be informed promptly of the reasons for arrest, to be tried in a fair and public hearing without undue delay by a competent, independent and impartial tribunal, and to ensure that the defendant is allowed adequate time and facilities to prepare his or her defence.

The particular challenges raised by the Abu Qatada case are dealt with specifically, in article 27(4) of the agreement. This provision attempts to avoid the risk that evidence obtained through torture will be used during the trial, by requiring that where there are serious allegations of ill-treatment, any resulting statement must not be admitted as evidence by the court, unless the prosecution is able to prove that the statement was made without coercion.

Yet despite the determination to draft the agreement to resolve the specific obstacles to the removal of Abu Qatada, the agreement remains open to legal challenge, and it remains to be seen whether the provisions are in fact enough to persuade authorities that Abu Qatada will be guaranteed a fair trial.

Vienna + 20

VIENNA+20
ADVANCING THE
PROTECTION OF
HUMAN RIGHTS

On the occasion of the 20th anniversary of the Vienna World Conference on Human Rights, an international expert conference entitled “Vienna+20: Advancing the Protection of Human Rights” was held in June 2013 in Vienna, organised by the Government of Austria in

cooperation with the Office of the UN High Commissioner for Human Rights. The conference reaffirmed that the World Conference and its Vienna Declaration and Programme of Action were milestones in the positive evolution of the international human rights system during the past 20 years. Participants highlighted that the human rights architecture of the United Nations needs to be further strengthened. International human rights mechanisms, including commissions of inquiry, the Special Procedures of the UN Human Rights Council, and human rights Treaty Monitoring Bodies, must be used to the fullest, and systematic follow-up to their recommendations must be ensured. A central theme of the conference was the important role of human rights defenders and civil society organisations as crucial actors for the promotion and protection of human rights. The conference concluded with a number of recommendations including, on the Rule of Law: The Right to an Effective Remedy for Victims of Human Rights Violations, supporting the idea of establishing a World Court of Human Rights as an additional tool of international human rights protection alongside the UN treaty body system and the regional human rights mechanisms. The Conference also included a number of recommendations relating to the UN, regional and national human rights systems. In addition, there were a series of recommendations related particularly to Realising Human Rights of Women Universally: Tackling the Implementation Gap. The conference also concluded with recommendations on Mainstreaming Human Rights: A Human Rights Based Approach to the Post-2015 Development Agenda.

For full information about the Conference, its program and outcomes, please [click here](#).

Consideration of state reports by the Arab Human Rights Committee

Algeria: The Arab Human Rights Committee considered the report of Algeria in October 2012. In its Conclusions and Recommendations, the Committee highlighted a number of positive aspects including the reduction of crimes punished by the death penalty and the guarantees for the independence of the judiciary in the Constitution. The Committee, however, raised concerns over a number of issues including that the national legislation does not prohibit the use of evidence extracted under torture. It also criticised the lack of clarity for compensation in the legislation in cases of arbitrary detention, or miscarriage of justice. The Committee was also concerned about the wide authority to use preventative detention. It also expressed its dissatisfaction that the State does not allow unannounced visits by various bodies.

For full text of State report and Concluding Observations of the Committee, please [click here](#).

Bahrain: The Committee considered the report of Bahrain in February 2013. In its Conclusions and Recommendations, the Committee welcomed the appointment of the Bahrain Independent Commission of Inquiry and work towards implementation of the Commission's recommendations. The Committee also welcomed a number of recent legislative amendments, including some amendments relating to punishment of crimes of torture. The Committee criticised that the declaration of the State of National Security in Bahrain was not consistent with the requirements of the Arab Charter on Human Rights. The Committee also criticised that the General Directorate for Complaints falls under the executive authority, which undermines its independence. The Committee also criticised the lack of adequate information in the State report concerning independence of the judiciary and fair trial guarantees. It also criticised lack of clarity concerning the use of preventative detention, and compensation for arbitrary detention and miscarriage of justice. Finally, the Committee expressed concern over provisions in the law which eliminates criminal responsibility for a man if he marries a woman who was the subject of violence by him, including rape. The Committee considered this a contradiction of principles of the Charter (including with regards violence against women) and free entry into marriage.

For full text of State report and Concluding Observations of the Committee, please [click here](#)

Qatar: The Committee considered the report of Qatar in June 2013, but the Concluding Observations have not yet been issued. For the text of the report, please [click here](#)

4. From the Field

Mauritanian civil society wants to have a say about torture prevention institution

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Esther Schaufelberger
MENA Programme Officer
APT

In May 2013, civil society activists reminded the Mauritanian government of its obligation to establish a National Preventive Mechanism (NPM) before 2 November 2013, in accordance with Mauritania's obligations following its accession to the Optional Protocol to the Convention against Torture (OPCAT) in October of last year. The NGOs made it clear that they want to participate in implementing the OPCAT and shaping the NPM. In a workshop that took place in Nouakchott from 27 – 28 May 2013, NGOs deepened their understanding of the OPCAT and discussed their vision concerning its implementation with government officials, the National Human Rights Commission (CNDH) and international experts.

The establishment of the NPM is an obligation of the state and the primary responsibility therefore lies with the government. But to ensure the legitimacy of the NPM, it is important that its establishment is subject to an open, inclusive and transparent process, involving not only the authorities, but also a wide range of actors, including civil society. The NGOs discussed how they can best contribute to the process and thereby ensure the independence and efficiency of the NPM. In particular, they want to ensure that the composition of the NPM will respect gender-balance and the cultural diversity of the country.

During the workshop, participants took inspiration from best practices of other State Parties to the OPCAT and discussed with Hans-Jörg Bannwart from the Sub-Committee of the United Nations for the Prevention of Torture (SPT which oversees the implementation of the OPCAT), Mondher Cherni, Secretary General of the Organization against Torture in Tunisia (OCTT), Dr. Hamida Dridi, member of the executive committee of the Tunisian League of Human rights (LTDH) and with the APT.

The workshop participants made 11 recommendations to the government, and proposed that the government creates a working group with participants from the public administration and civil society to work out a concrete NPM proposal.

The workshop was organized by the APT jointly with international and national NGOs (SOS Immigration and the members of the OPCAT working group, part of Dignity's and Restart's regional detention monitoring forum) and with the support of the Office of the High Commissioner for Human Rights (OHCHR).

The constitution and transitional justice in Libya

Thomas Ebbs

London Programmes Coordinator for Lawyers for Justice in Libya



Constitutions play a vital role in the recovery of transitional states. However, they are rarely seen to be instrumental in providing transitional justice. Despite this, constitutions can share many of the characteristics that are considered key features of transitional justice mechanisms/tools. Constitutions may offer the opportunity to acknowledge past atrocities and the intention to avoid future wrongdoings. For example, the preamble of the South African constitution seeks to “recognise the injustice of our past... heal the divisions of the past and establish a society based on democratic values, social justice, and fundamental human rights”. Constitutions may also offer firm foundations for the rule of law through the establishment of checks and balances, defining the separation of state powers, and through recognition of human rights. This may have a significant impact on preserving and enhancing peace, encouraging reconciliation and even laying the founding values for other transitional justice mechanisms. Constitutions offer a new start and a break from the past.

Under the Gaddafi regime, law was a tool of oppression and not of empowerment. As a result there is a great sense of scepticism and distrust by the public in general when it comes to the ambitious promises of legal reform. Therefore, while rule of law is not necessarily yet a source of legitimacy, groups and individuals who were perceived to have contributed the most to the 17 February Revolution are considered to have a great deal of legitimacy. This is a result of the Libyan revolution having clear winning and losing sides, with direct public engagement in the conflict. After the war concluded, this helped establish and normalise, victor's justice. This in turn has fed into the idea that those who brought about victory themselves were legitimate (another notion



inherited from the Gaddafi regime) and the rightful authorities in the new Libyan society.

The adoption of a constitution offers a potential turning point for Libya to break from this state of 'revolutionary legitimacy' and instead establish a legitimacy based on the rule of law.

A strong constitution ensures that only breaches of known and publicly accessible law are considered before recognised courts. It also ensures that every person is subject to the same laws regardless of rank, background, or identity. In this way, the constitution and the laws it governs promote freedom, dignity, equality and justice. However, this can only be achieved if the process of drafting a constitution and agreeing its provisions holds similar legitimacy and populist "buy in" as the revolutionary forces currently do in Libya.

The building of populist sentiment is not solely in the capacity of political parties and state governments. A cornerstone of the strategy of Lawyers for Justice in Libya (LFJL) for enhancing transitional justice is the need to foster public ownership in the constitution building process. LFJL's Destoori (which in Arabic means 'my constitution') project is an on-going effort to achieve this. The project's activities have so far focused on awareness raising (through media adverts and events) and direct engagement in order to develop the idea that the constitution is, and must remain, an inclusive process. The Destoori Guides, a team of lawyers and social activists, visited 37 communities all across Libya's three regions during the 'Rehlat Watan' tour. They canvassed opinion using electronic questionnaires, engaged the public in discussions, and carried out 'constitutional games' designed to help challenge and develop the opinions of participants. These interactions will be the basis for LFJL's future report and recommendations which will be presented to the Constitutional Drafting Committee (CDC) upon its formation.

Over 20 of the communities the team visited stated that they had never experienced any interaction with civil society initiatives before the visit from LFJL. This is as a result of the past regime's extreme restrictions on civil society and the majority of current NGO efforts being limited to major cities such as Benghazi and Tripoli. LFJL also invited current representatives from the General Nation Congress (GNC) to accompany the Destoori

Guides during their visits to local constituencies. Whilst many expressed their interest in the project's activities none were present at any of the events. This level of on-going alienation highlights the need for greater public engagement in legal reform efforts in Libya.

Placing greater emphasis on representation and inclusion in constitutional drafting makes the form of election of those who draft it even more significant. This is why LFJL is currently concerned that the process by which Libya's CDC is elected will damage the inclusivity of the process. The draft law for the election of CDC members which is currently proposed fails to include assurances, such as quotas, for the participation of women and does not provide safeguards for the representation of minorities. It also states that only articles of the constitution that do not reach the necessary level of agreement within the GNC will be subject to a public referendum. These measures are counter inclusive and may prohibit the constitution from fully representing people and their aspirations. LFJL is encouraged, however, by the level of enthusiasm it has received from the public during Destoori. We are therefore hopeful that this support will translate into a demand for a popular constitution which provides the foundation for the rule of law to flourish. Only then will there be no place for law by force or revolutionary legitimacy, and true justice for all may be realised.

For further information about LFJL's activities please visit our website, the [Destoori webpage](#) and our Facebook.

Beneath the Jasmine: Dealing with the past to master the future

Gabriele Reiter
OMCT Tunis

Tunisia has a legacy of applying torture and other cruel, inhuman and degrading treatment as a tool to suppress political opponents and human rights defenders and in recent times more commonly to punish common criminals. The profiles and backgrounds of victims of torture are as manifold as Tunisian society itself. The debate on the widespread use of torture under the

former regimes as well as incessant news of continued such practices needs to be brought to a larger public. This is particularly important in the framework of Tunisia's efforts to strive towards transitional justice.

The photographer Augustin Le Gall together with OMCT captured the faces and stories of 34 men and women from all walks of life, who share a glimpse of their traumatic past with the public viewer. The organisers opted for a subtle artistic approach using photography paired with an account of testimonies and reflections at various places in the capital Tunis. The photo exhibition was on display throughout the entire period from the National Anti-Torture Day (8 May 2013) to the International Day for the Support of Victims of Torture (26 June 2013) at the cultural centre "Ibn Rachiq" and on Avenue Bourguiba. Since then, it has started touring through Tunisia's various regions.

Several cultural events and political debates accompany the exhibition, such as lectures from books written in prisons, theatre plays as well as debates with direct and secondary victims of torture and human rights defenders. The high-level opening on 8 May was attended by most of the protagonists of the exhibition, who reunited a few weeks later to discuss their experiences and impressions from participating in the exhibition. They formulated a number of points and recommendations for various stakeholders, including the National Constituent Assembly:

- The absolute prohibition of torture and other cruel, inhuman and degrading treatment is an objective and universal value. There is no way torture could be justified regardless of the context, the country or the culture;
- States need to assume their responsibility to deal with acts of torture and ill treatment. This includes restoring truth, fighting impunity as well as rendering justice and social, medical and economical assistance to victims;

- Torture and other cruel, inhuman and degrading treatment affects direct victims as well as secondary victims such as family, friends and neighbours.

This project not only aims at raising public awareness but also seeks to inspire the current debate on issues related to torture and ill treatment within the framework of transitional justice. Governmental authorities and civil society activists will have the opportunity to include these testimonies and observations into the political debate on transitional justice as well as on their work to prevent torture and ill treatment in Tunisia.

Please visit www.omct.org for a brief introductory film to the photo exhibition "Sous le jasmin". In September, the publishing house 'Ceres' will present portraits from the exhibition in an edition dealing with Tunisia's legacy around prisons.

Project partners

OMCT partners with the photographer Augustin Le Gall from

the Association DEKADRAGE, a collective of photographers, who work on social, political, economic and cultural issues in the Mediterranean and Arab world. The project team closely consulted with Tunisian partner organisations throughout the project implementation. The Tunisian Ministry of Culture and the cultural centre "Ibn Rachiq" supported the exhibition from its initiation. The Helvetic Confederation (Switzerland) provided the necessary financial support.

25 Years On: Towards Universal Ratification of the UN Convention against Torture – What role for civil society?

Noemie Crottaz

UN Representative of Alkarama

What do Sudan, the Comoros, Oman and Palestine have in common? They are the only four members of the Arab League who have yet to ratify the UN Convention against Torture, out of a total of 22 members of the League – representing a percentage rate of 82% of Arab



countries that are bound by the Convention.

May 2013 marked the 25th anniversary of the creation of the Committee against Torture, or CAT, which is the treaty-body responsible for ensuring that its founding treaty is respected and implemented in the countries that have chosen to ratify it. A number of human rights groups, including Alkarama took this occasion to push for universal ratification of this key human rights instrument.

153 countries so far are party to the Convention, but as the sixth-most ratified human rights treaty out of a total of nine, there is still a long way to go before it becomes universal. This, in short, may be because of the sensitive nature of torture.

APT, IRCT, OMCT, REDRESS, TRIAL and Alkarama sent letters highlighting the importance of CAT ratification to the remaining 42 countries which are not yet party to the Convention and put out a joint press release explaining their initiative. A key argument of the initiative was that



numerous countries, including the Comoros, Oman and Sudan, have made promises to join the Convention, particularly during the Universal Periodic Review process, and ratification of the torture treaty would be an easy way for them to fulfill one of their commitments. A number of other arguments have been provided by APT, which would be useful in any campaign lobbying for state ratification of the torture convention. There would also be numerous advantages for Palestine, which recently joined the UN as an observer state, if it were to ratify the treaty, which it has promised to do.

This initiative for universal adherence can highly benefit from efforts by organizations working on the issue of torture at the national level, who can call on states to ratify the Convention. All organizations working on the problem of torture, from prevention to rehabilitation of torture victims at the national level, stand to gain from ratification of the Convention, as treaty provisions are specifically aimed at the local and national levels. These obligations include prohibiting torture and ill-treatment from taking place, combating impunity and prosecution of perpetrators, providing victims with reparation including compensation and rehabilitation, and the

establishment of a legal framework to ensure reform at the legal, policy, and institutional levels. We cannot ignore the fact that the use of torture by States and other groups is also closely based on, and leads to, numerous other violations, from lack of medical care, unfair trials, or even to extra-judicial executions. Therefore, prevention of torture will have an impact on preventing these and many other violations.

NGOs are also able to participate in regular periodic reviews by the CAT of treaty implementation by their state; and for those states that have accepted it, the review of individual cases to determine whether individual's rights under the treaty have been violated. Those organizations can also submit on behalf of victims, thereby ensuring a level of accountability

There are many activities that can be undertaken at the local and national levels to encourage ratification of such a treaty, including direct lobbying with the executive and key ministries, for example by emphasizing the positive image that the ratifying state creates for itself when it ratifies such a treaty; with legislative bodies, explaining how the Committee against Torture can assist by providing guidance on relevant legislative changes; and public campaigns through the media and outreach activities to inform the public of the important role of the Torture Convention and how they can participate directly to call for ratification, via the signature of a petition for example.

Of course, the work of human rights organizations is never complete, and even once ratification has been achieved, torture and ill-treatment is unfortunately part of the reality of our world. As the so called "war on terror" has highlighted, even those countries that pride themselves on respect for human rights and democratic values are susceptible to sliding backwards. Nevertheless, universal ratification of the Convention against Torture would be a strong signal that the international community in principle refuses to accept this scourge. The emphasis can then shift to prevention, the next logical step in the ongoing battle against torture.

5. Questions and Answers

Should the crime of torture ever be time-barred?

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Matthew Sands
Legal Advisor, APT

Across the region, we have heard demands to bring perpetrators of gross human rights violations to justice, even years after the abuses have taken place.

Domestic laws often place a limit on the time available to initiate a prosecution after a crime, after which the prosecution is time-barred. These are known as periods of prescription, and are common to most legal systems. Time limits often apply to both criminal and civil proceedings, though there are obviously differences between jurisdictions.

In spite of these laws, there is a growing international consensus that torture should be excluded from any applicable period of prescription.

As codified in a number of international treaties already, core international crimes, including crimes against humanity and war crimes, are not subject to periods of prescription. This is based on the *jus cogens* status of such crimes, recognising them as the worst crimes that anyone can commit against another person.

Several international experts, including a number of UN bodies, have considered that torture, as a *jus cogens* offence, must also be an imprescriptible offence. For instance, in 2005, Diane Orentlicher, then UN Special Rapporteur to Update the Set of Principles to Combat Impunity, noted that the: “the general trend in international jurisprudence has been towards increasing recognition of the relevance of this doctrine [*jus cogens*] not only for such international crimes as crimes against humanity and war crimes, but also for gross violations of human rights such as torture.”

The logic to this approach is undeniable. As a gross violation of one of the most fundamental and non-derogable human rights, torturers should be prosecuted and punished for as long as necessary after the crime. Torture is an offence against all humanity, and States should not allow domestic rules on prescription to stand in the way of prosecution.

Yet the UN Convention against Torture does not explicitly require State Parties to exclude torture from domestic periods of prescription. This has led some people to conclude that the Convention does not exclude that torture, like other crimes, should be subject to a reasonable period of prescription.

Nevertheless, the UN Committee against Torture has consistently recommended that periods of prescription must not apply to torture. For instance, during the recent review of Morocco, the CAT recommended that the State party should “make certain that, in keeping with its international obligations, anyone who commits acts of torture, attempts to commit torture, or is complicit or otherwise participates in such acts is investigated, prosecuted and punished without the possibility of availing themselves of any statute of limitations.”

This position has been echoed by the UN Special Rapporteur on Torture, as well as the UN Human Rights Committee. Both recognise that barring the prosecution of torture after a period of prescription acts as a serious impediment to the establishment of legal responsibility.

Despite the international pressure, States have been slow to adopt torture as an imprescriptible offence, often leaving torture subject to unreasonably short prescription periods. For instance, in Nepal, complaints must be made within 35 days of the crime for redress to



be sought; Serbia and Montenegro permit just 3 years for a prosecution to be launched; and in Romania, 8 years is the maximum period. In Denmark, torture is subject to the standard Danish 10 year period of prescription. This limited period has forced the Danish prosecutor to drop some cases, which can hardly be seen to serve the best interests of justice.

The public sentiment of justice requires that torture is made an imprescriptible offence. As torture is committed by State actors, or as a matter of government policy, victims are regularly prevented from asserting their

claims to justice while the same government remains in power. Victims are therefore denied any meaningful chance to assert their claims for justice, unless torture is capable of prosecution after the government is removed. As we have seen, such action can take many years. Any means which prevent the investigation and punishment of those responsible for gross violations of human rights such as torture must therefore be rejected.

All States should make torture an imprescriptible offence. This is best achieved explicitly in law. For instance, the Philippines has enabled torture to stand exempt from national periods of prescription by including a rule in

national law criminalizing the offence. As a result, torture may be prosecuted any time after the lapse of the usual prescriptive periods applicable to common law crimes and felonies.

States must therefore accord the prosecution of torture, as one of the most serious crimes, rules which take account of its particularly grievous nature. By removing torture from any applicable domestic regime of prescription, States serve the interests of justice by removing unreasonable barriers to investigation and prosecution.

The Middle East and North Africa: **A Torture-Free Zone.**

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